HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 01, 2013
83rd Legislature, Number 63
The House convenes at 10 a.m.
Part Two

Thirty-six bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills on the General State Calendar analyzed in Part Two of today's *Daily Floor Report* are listed on the following page.

Two postponed bills, HB 590 by Naishtat and HB 459 by Guillen, are on the supplemental calendar for second-reading consideration today. The analyses are available on the HRO website at http://www.hro.house.state.tx.us/BillAnalysis.aspx.

The House will consider a Congratulatory and Memorial Calendar today.

Bill Callegari
Chairman
83(R) – 63

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
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SUBJECT: Regulating bail bond insurers' taxing and reserve requirements

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Smithee, Eiland, G. Bonnen, Creighton, Morrison, Muñoz, Sheets, Taylor, C. Turner

0 nays

WITNESSES: For — Joe Flack, Jr., Financial Casualty & Surety, Inc.; James Hooker, Financial Casualty & Surety, Inc.; Kandice Sanaie, Texas Association of Business

Against — None

On — (*Registered, but did not testify:* Jeff Hunt, Texas Department of Insurance)

BACKGROUND: Occupations Code, sec. 1704.001 defines a bail bond surety, also known as a bail bondsman, as an individual or corporation that for compensation deposits cash or another security to ensure the appearance in court of a person accused of a crime. A bail bond insurer, or surety company, insures commercial bail bondsmen against their inability to pay a forfeited bond.

Typically, a bondsman charges a bond service fee equal to 10 percent of the face value of the bond in exchange for incurring the bond's liability should the defendant fail to appear in court. A surety (bail bond insurer) typically receives a premium of 1 percent of the face value of the bond.

It is a long-established practice by bail bond insurers to record as premiums collected in their financial statements the actual amount received by the bail bond surety and not the service fees collected by bail bond agents. Bail bond insurers also do not customarily maintain an unearned premium reserve, a fund containing the portion of premiums that have been paid in advance for insurance yet to be provided. Neither practice is specified by law, and regulators have questioned the interpretation of statute in regard to these practices.

DIGEST: HB 1047 would prohibit a bail bondsman's service fees from being

included in a bail bond insurer's premium receipts when determining the insurer's premium taxes. It also would allow bail bond insurers to continue to operate without an unearned premium reserve.

The bill would allow surety companies' financial statements filed with Texas Department of Insurance to exclude as direct written premium service fees retained by a bail bondsman.

For disclosure purposes, HB 1047 would require that in addition to including reported gross premiums, surety companies' financial statements contain the service fees retained by the bail bondsmen and the net total of these amounts.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1047 would clarify the bail bond market's regulation, financially protect bail bond companies, and preserve the important role that these surety companies play in the legal system by insuring bail bond companies.

Some interested parties have suggested that surety companies should be regulated like traditional insurance companies, which, among other things, are required to have a large unearned premium reserve to pay unused portions of premiums if a policyholder cancels a policy.

Bail bond insurers, or surety companies, do not operate this way since all bail bond service fees and surety premiums are paid prior to a defendant's release; none of its premiums are ever unearned. HB 1047 would rightly acknowledge this. Placing current taxing practices for bail bond insurers into law could prevent surety companies' taxes from increasing roughly 10-fold, which would fundamentally alter the bail bond market.

Preserving bail bond insurers' *de facto* exemption from requirements to maintain unearned premium reserves would prevent the imposition of significant new financial burdens. Imposing unnecessary financial requirements on bail bond insurers would threaten surety companies' solvency, reduce access to bail bonds, and increase costs to taxpayers.

Requiring bail bond insurers to clarify in their financial statements the difference between the gross premiums they collect and the service fees retained by their insured bondsmen would increase financial transparency

and help distinguish the two entities' roles.

Since HB 1047 merely places current bail bond taxing practice into statute, the bill would not result in any change in state tax revenue.

OPPONENTS SAY:

HB 1047 could impose a cost to the state by exempting bail bond surety service fees from surety companies' taxable insurance premiums. In their fiscal analysis, the Legislative Budget Board found the revenue loss to the state was indeterminate, as they could not estimate the decrease in premium tax revenue.

NOTES:

The companion bill, SB 1397 by Estes, was left pending in the Senate Business and Commerce committee on April 30.

SUBJECT: Department of Agriculture economic development programs

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 6 ayes — T. King, Anderson, Kacal, Kleinschmidt, Springer, White

0 nays

1 absent — M. González

WITNESSES: For — *(Registered, but did not testify:* Donna Chatham, Association of Rural Communities in Texas; Marida Favia del Core Borromeo, Exotic Wildlife Association; Ken Hodges, Texas Farm Bureau; Ronald Hufford, Texas Forestry Association; Carlton Schwab, Texas Economic Development Council; Bob Turner, Texas Poultry Federation; Gary Walker*)*

Against — *(Registered, but did not testify:* Dustin Matocha, Texans for Fiscal Responsibility*)*

On — Bryan Daniel, Texas Department of Agriculture

DIGEST: HB 1308 would make various changes to the Texas Department of Agriculture's economic development programs, such as establishing the Texas Economic Development Fund as a separate account in the treasury, allowing TDA to accept gifts, allowing TDA to establish the assistance available to certified retirement communities by rule, expanding the interest rate reduction program to include businesses in rural areas, and allowing TDA to request rather than require a letter from a commercial loan officer for approval of a loan application. The bill also would make non-substantive changes, including updates to statutory references and the merger and amendment of several required reports.

Establishing the Texas Economic Development Fund. The bill would establish the Texas Economic Development Fund as a separate account in the state treasury to receive the interest and revenue associated with the program from the U.S. Treasury and other sources. Money in the fund would be appropriated to TDA for economic development programs.

Economic development opportunities. HB 1308 would allow TDA to accept gifts or appropriations to administer economic development programs.

Certified retirement community program. The bill would allow TDA to establish the assistance available to certified retirement communities by rule rather than having it prescribed in statute. It would exempt the Texas Certified Retirement Community Program General Revenue Account from the uses of dedicated revenue, including use for budget certification.

Texas Agriculture Finance Authority interest rate reduction program. HB 1308 would expand the interest rate reduction program to include businesses in rural areas.

Texas Agriculture Finance Authority agricultural loan guarantee program application requirements. TDA could request rather than require a letter from a commercial loan officer for approval of a loan application.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1308 would make improvements to the Department of Agriculture's Economic Development Program, which contributes directly to a strong and diverse Texas economy. The bill would enhance TDA's ability to support producers, businesses, and communities statewide and help TDA with the administration of a federal economic development program for small businesses. It also would clean up statutes pertaining to the Texas Agriculture Finance Authority.

The bill also would exempt the Texas Certified Retirement Community Program Account from budget certification. This would ensure that the funds were used for the intended purpose of marketing and promoting retirement opportunities in Texas and Texas' rural communities. The program typically consumes all of its funding, but in the event that there are unexpended balances, HB 1307 would protect those funds from being used to certify the budget.

OPPONENTS SAY:

HB 1308 would exempt the Certified Retirement Communities Program Account from funds consolidation, resulting in less money that could be

used to certify the state budget in the event of a budget shortfall.

NOTES:

A similar bill, SB 1214 by Schwertner, passed the Senate on the local and uncontested calendar on March 27 and is scheduled for public hearing in the House Committee on Economic and Small Business Development on May 1.

The LBB's fiscal note indicates the bill would result in no significant fiscal implication to the state.

The bill would create the Texas Economic Development Fund in the state treasury for the deposit of $46.4 million in federal funds from the State Small Business Credit Initiative Act of 2010, as well as investment returns and interest earnings generated by the program. These federal funds are currently deposited to the general revenue fund. The LBB projects that because these receipts are federal funds, this would result in a non-certification loss to the general revenue fund and have no significant fiscal impact.

According to the fiscal note, the bill also would recreate a general revenue dedicated account for the Texas Certified Retirement Communities Program that would be exempt from uses of dedicated revenue. This account would receive fee revenue generated by the Texas Certified Communities program, which is currently deposited to the general revenue fund. This would result in a $13,000 revenue loss to the general revenue fund and an identical gain to the newly created general revenue dedicated account.

SUBJECT: Establishing the Defamation Mitigation Act

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King, Raymond, S. Thompson

0 nays

1 absent — Hernandez Luna

WITNESSES: For — Shane Fitzgerald, Freedom of Information Foundation of Texas; Debbie Hiott, Texas Press Association and Austin American-Statesman; Laura Prather, Freedom of Information Foundation of Texas, Texas Press Association and Texas Broadcast Association; Jerry Martin, KPRC-TV/Texas Association of Broadcasters; David Peeples; (*Registered, but did not testify:* George Allen, Texas Apartment Association; Donnis Baggett and Thomas Stephenson, Texas Press Association; Gary Borders and Ashley Chadwick, Freedom of Information Foundation of Texas; Mike Hull, Texans for Lawsuit Reform; Lisa Kaufman, Texas Civil Justice League; Eric Woomer, Daily Court Review & Daily Commercial Record)

Against — None

On — Jason Byrd and Brad Parker, Texas Trial Lawyers Association

DIGEST: CSHB 1759 would add a new subchapter known as the Defamation Mitigation Act to the Civil Practice and Remedies Code. The purpose of the subchapter would be to provide a method for a person who had been defamed by a publication or broadcast to mitigate any perceived damage or injury.

The bill would establish provisions relating to the correction, clarification, or retraction (retraction) of false content by a publisher in a manner similarly prominent to the original information. The subchapter would apply to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information.

The bill would establish a procedure for a publisher to ask a court to abate a lawsuit if the person filing the lawsuit did not request a retraction. The statute of limitations would be stayed during the retraction process.

The bill would define "person" as an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity. The term would not include a government or governmental subdivision, agency, or instrumentality.

Exemplary damages. CSHB 1759 would prohibit a person from recovering punitive damages if the person failed to request a retraction within 90 days after receiving knowledge of the publication. The bill also would prohibit a person from recovering punitive damages from a publisher who made a retraction in accordance with the provisions unless the publication was made with actual malice.

Timely and sufficient correction. The bill would not prevent a person from filing a defamation or libel lawsuit but would allow a person to maintain an action only if the person had made a timely and sufficient retraction request or if the defendant had made a retraction.

A retraction request would be sufficient if:

- served on the publisher;
- made in writing, reasonably identified the person making the request, and was signed by the individual claiming to have been defamed or by the person's attorney or agent;
- stated with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
- alleged the defamatory meaning of the statement; and
- specified the circumstances causing a defamatory meaning of the statement if it arose from something other than the express language of the publication.

A publisher would have 30 days to run the retraction or to request additional information regarding the falsity of the allegedly defamatory statement. The requestor then would have 30 days to provide the information. Failure to do so would prohibit the requestor from recovering exemplary damages, unless the publication was made with

actual malice.

A retraction would be timely if published not later than 30 days after receipt of the request or the information regarding the falsity of the allegedly defamatory statement. It would be sufficient if it was published in the same manner and medium as the original publication or, if that were not possible, with a prominence and in a manner and medium reasonably likely to reach substantially the same audience. This could be accomplished by being published in a later or in the next feasible issue, edition, or broadcast of the original publication.

If the original publication no longer existed, the retraction could be published in the newspaper with the largest general circulation in the region. If the original publication were on the Internet, a retraction could be appended to the original publication.

In addition to being prominently placed, a retraction would:

- acknowledge that the published statement was erroneous;
- disclaim an intent to communicate a defamatory meaning arising from other than the express language of the publication;
- disclaim an intent to assert the truth of a statement attributed to another person identified by the publisher; or
- publish the requestor's statement of facts, exclusive of any portion that is defamatory of another, obscene, or otherwise improper for publication.

A retraction involving two or more statements could deal with the statements individually in the prescribed manner.

A timely and sufficient retraction made by a person responsible for a publication would constitute a retraction made by all persons responsible for that publication but would not extend to an entity that republished the information.

Challenges to retraction or request for retraction. CSHB 1759 would set deadlines for publishers to serve notice that they intended to rely on a retraction as a potential defense or a defense to a lawsuit. A plaintiff or potential plaintiff then would have deadlines to respond to that notice.

A publisher also would be able, within a certain time frame, to challenge

the sufficiency of the retraction request. Unless there was a reasonable dispute regarding the actual contents of the retraction request, a court would rule, as a matter of law, whether the request met the requirements of the subchapter.

Information related to a retraction request would not be admissible evidence at trial. If a retraction were made, its contents would not be admissible in evidence at trial except to mitigate exemplary damages. The fact that a retraction offer was made and refused also would not be admissible trial evidence.

Abatement process. If a retraction request were not made, CSHB 1759 would allow a defendant 30 days after it filed an answer to file a plea in abatement that alleged that the publisher did not receive the written request.

The plaintiff would be able to file a controverting affidavit before the 11th day after the plea in abatement was filed, and the court would consider the matter as soon as practical considering the court's docket.

If there were no controverting affidavit, the lawsuit would be automatically abated for 60 days so the retraction process could take place. All statutory and judicial deadlines under the Texas Rules of Civil Procedure would be stayed during the abatement period.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. It would apply only to information published on or after the effective date.

SUPPORTERS SAY:

CSHB 1759 could prevent libel lawsuits from being filed by offering swift and prominent corrections of mistakes that may have harmed a person's reputation. It would encourage individuals to come forward in a timely manner to request retractions, vindicate their reputation, and avoid becoming involved in costly litigation.

Those who believed their reputations had been damaged by false information would not lose their day in court and publishers still could be punished for committing libel.

The bill would apply to all defamations, whether public or private, media

or non-media, and would establish a clear structure for the prompt resolution of such disputes.

Publishers and broadcasters make mistakes, and the bill would provide them with a quick and cost-effective means of correcting or clarifying them. Publishers want to correct mistakes but cannot do so if the subject of the error fails to complain.

The bill would address digital publishing by requiring a retraction be permanently attached to information published on the Internet.

The bill would provide a "cooling off" period that current Texas libel law lacks. Thirty other states have retraction statutes dating back as far as 1882. The Uniform Law Commission adopted a uniform law in this area in 1993 and CSHB 1759 is patterned after that law.

The bill would encourage corrections to be published as prominently as the initial false information. This could do more to help individuals quickly restore their reputations than waiting for a lawsuit to be resolved long after the statement was published.

Individuals who believed their reputations had been harmed by published information still could immediately file a lawsuit and call a news conference to proclaim that the information was false. However, the lawsuit would be abated to allow for a retraction request and response.

Unlike some physical damages, injuries to an individual's reputation can be undone by early retraction instead of protracted litigation. Avoidance of lawsuits and early closure of lawsuits would be good public policy.

OPPONENTS SAY:

CSHB 1759 could limit the ability of a person whose reputation was damaged by publication of false information to collect monetary damages. It would put the burden on the individual who was the subject of false information to ask in writing for a correction or retraction. A person who failed to meet the bill's requirements to request a timely and sufficient retraction could face procedural hurdles to a libel lawsuit.

Successful libel lawsuits can serve as a deterrent to sloppy reporting and editing practices that make mistakes more likely. Publishers and broadcasters closely follow trends in libel law and could adjust their best practices to avoid being sued.

OTHER OPPONENTS SAY:

It would be better to prevent lawsuits from being filed until a person had requested a retraction and the publisher had time to respond. CSHB 1759 still would allow a person to run to the courthouse before even asking for a correction.

NOTES:

The committee substitute differs from the bill as filed in that it would:

- eliminate a definition of defamatory;
- apply the retraction process to a claim for relief, however characterized;
- allow a person who does not request a retraction to recover exemplary damages if the publication was made with actual malice;
- require retractions to be published in the same manner and medium as the original publication if possible; and
- set up an abatement process when a lawsuit is filed before a retraction is requested.

The Senate companion, SB 1514 by Ellis, was referred to the Senate State Affairs Committee on March 19.

SUBJECT: Allowing open meetings to be held by videoconference call

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 7 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner, Vo

0 nays

WITNESSES: For — Matt Kramer, Sahs and Associates (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Teresa Beckmeyer; John Dahill, Texas Conference of Urban Counties; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County Commissioners Court; Craig Pardue, Dallas County)

Against — None

On — (*Registered, but did not testify:* Chad Lersch, Texas Department of Information Resources)

BACKGROUND: Under the Open Meetings Act, Government Code, sec. 551.127 contains provisions allowing governmental bodies to meet by videoconference call only if a quorum is physically present at one location. The law provides an exception allowing state governmental bodies or governmental bodies that extend into three or more counties to meet by videoconference call if a majority of the quorum is physically present at one location.

DIGEST: CSHB 2414 would allow governmental bodies to meet by videoconference call if certain conditions were met, regardless of whether a majority of body's quorum was physically present at one location.

The bill would define "videoconference call" as a communication conducted between two or more persons in which one or more of the participants communicate via duplex audio and video signals transmitted over a telephone network, data network, or the Internet.

A member of the governmental body could be counted present and participate remotely in a meeting by means of a videoconference call if the

video and audio feed of the participation was broadcast live at the meeting and the following conditions were met:

- the governmental body provided public access to at least one suitable physical space located in or near the geographical jurisdiction of the governmental body;
- the location was equipped with videoconference equipment that provided two-way clearly visible and audible audio and video display of each participant, as well as a camera and microphone for public testimony and participation;
- at least one agent of the governmental body was present at the physical space to conduct the meeting and facilitate public participation so that any member of the public could participate in the same manner as a person who was physically present at a meeting not conducted by videoconference call; and
- notice of the meeting specified the location of the described physical space.

The bill would remove a requirement that audio and video signals at locations attended by the public meet or exceed the quality of the audio and video signals perceptible by the members of the governmental body participating in the meeting.

The bill would take effect September 1, 2013 and would apply to open meetings held on or after that effective date.

SUPPORTERS SAY:

CSHB 2414 would amend the state's open meetings laws to reflect the use of Internet-based visual communications technology. Its provisions are based on recommendations for the use of Internet-based communication technology changes under the Open Meetings Act, which appear in the Texas Department of Information Resources' 2012 Biennial Performance Report.

By recognizing the availability of technology that lets people meet and interact from remote locations, the bill would allow a member of a governmental body to be counted present and participate at an open meeting by way of videoconferencing. This would help governmental bodies save money by eliminating traveling expenses for members and government employees to physically attend meetings. The ability to meet by videoconference would be particularly helpful to some groundwater conservation districts whose governing board members come from

numerous counties.

The bill would not decrease public participation. It would require the governmental body to make available a conveniently located physical space from which the public could provide testimony or otherwise participate via videoconference. There is no reason to assume that fewer members of the public would take advantage of this option than attend meetings in person today. In any case, this is strictly a permissive bill that would allow governmental bodies to meet by videoconference. Individual governmental bodies could choose to adopt policies that require a majority of its quorum to be physically present in one location at which the public could also convene.

According to the fiscal note, HB 2414 would impose minimal, if any, costs to local governments Several state agencies reported to the Legislative Budget Board that costs to implement the provisions of CSHB 2414 could be absorbed within existing resources.

OPPONENTS SAY:

CSHB 2414 could significantly reduce public participation and interaction with members of governmental bodies. Not only would it allow videoconference meetings at which every member of the decision-making body was in a location separate from the public, the bill would not even require an employee of the governmental body to be present to facilitate public participation. The best opportunities for public participation come in meetings where the public and the members of the governmental body are in the same physical space.

While video technology continues to improve, it is not sufficiently reliable to ensure the public would be able to follow the proceedings of videoconference meetings. In addition, despite the projections in the fiscal note, there would be a cost for governmental bodies to purchase the cameras, microphones, and video displays required by CSHB 2414.

OTHER OPPONENTS SAY:

It would be fine to allow one or two members of the governmental body to participate in the meeting via videoconferencing technology, but the bill would go too far in no longer requiring that a majority of the quorum be present in a public location. At the very least, such permission should be restricted only to certain types of governmental bodies, such as multicounty groundwater conservation districts.

NOTES:

Compared to HB 2414 as filed, the committee substitute would:

- add telephone network and the Internet to the definition of videoconference call;
- allow governmental body employees to participate remotely in meetings;
- require the physical space available to the public be located within a reasonable distance of the geographic jurisdiction, if any, of the governmental body; and
- remove a requirement that the meeting notice include an Internet website address where someone could watch a meeting.

The bill as introduced would have required that:

- all video and audio communication be displayed in real time on a website maintained by the governmental body and accessible to the public; and
- a member of the public be able to remotely view and listen to the meeting through the website.

SUBJECT: Creating port authority transportation reinvestment zones

COMMITTEE: Transportation — committee substitute recommended

VOTE: 10 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, Pickett, Riddle

0 nays

1 absent — McClendon

WITNESSES: For — James Rich, Greater Beaumont Chamber of Commerce and Sabine Neches Navigation District; (*Registered, but did not testify:* Duane Gordy, Community Development Education Foundation; Dennis Kearns, BNSF Railway; John Roby, Port of Beaumont; Keith Strana, Sabine Neches Navigation District; Brian Yarbrough, Port of Corpus Christi Authority)

Against — (*Registering, but did not testify:* Terri Hall, Texas TURF)

On — Phil Wilson, Texas Department of Transportation

BACKGROUND: Current law allows municipalities and counties to establish transportation reinvestment zones (TRZs) to fund highway projects.

For a municipality (Transportation Code, sec. 222.106) or county (Transportation Code, sec. 222.107) establishing a TRZ:

- the *tax increment base* of a local entity is the total appraised value of all real property located in a zone for the year in which the zone was designated;
- the *captured appraised value* is the total appraised value of all real property in a zone for a subsequent year, minus the entity's *tax increment base*; and
- a *tax increment* is the amount of property taxes assessed for one year on the *captured appraised value* of real property in the zone.

DIGEST: CSHB 2685 would create port authority transportation reinvestment zones (TRZs) as separate entities in statute. The bill would also give counties

and municipalities the ability to use TRZs for port projects. Under the bill, port authorities could finance projects through the increase in property tax revenue (tax increment) resulting from improvements associated with a port project in a TRZ. Port authorities would include local navigation districts.

TRZ Administration. Before establishing a TRZ, the port commission governing the port authority would:

- determine that an area was unproductive or underdeveloped and that a port project financed by a TRZ would improve the security, movement, and intermodal transportation of cargo or passengers in commerce and trade;
- determine that a port project financed under the bill met certain requirements;
- hold a hearing 30 days before the date the port commission proposed to designate an area as a TRZ; and
- publish notice of the hearing and the intent to create a TRZ up to seven days before the hearing.

A TRZ established under CSHB 2685 would take effect immediately on the port commission's adoption of an order or resolution. The order or resolution would name the TRZ, designate its boundaries, establish the base year for tax increment financing, and establish an account for the funds generated by the zone. The boundaries of a TRZ could be changed at any time except that property could not be removed or excluded from a designated zone if any part of the tax assessment on that property had been pledged to secure funding for a port project under the TRZ.

Only the taxes assessed on real property taxable by the port authority would be included in the tax increment financing under a port authority TRZ.

After establishing a TRZ under CSHB 2685, the port commission of the port authority could:

- pay the tax increment realized in a zone, including maintenance and operation taxes into the account created for the TRZ;
- repay debt incurred to finance a port project under the TRZ;
- grant ad valorem tax relief on property in the TRZ, not to exceed the tax increment collected under the TRZ for that year; and

- contract with a public or private entity to develop, redevelop, or improve a port project in the TRZ.

Under the bill, the port authority could assess all or part of the cost of the port project against property within the TRZ, with the assessments levied and payable in installments in the same manner as provided for municipal and county public improvement districts, provided that the installments did not exceed the total amount of tax abatement or relief granted by the commission. If the port commission provided tax abatement or relief under the TRZ, those agreements would terminate on December 31 of the year in which the port authority completed any contractual requirement that included the pledge or assignment of tax assessments under the TRZ.

The TRZ would terminate on December 31 of the 10th year after the year the zone was designated, if the port authority failed to use the zone for the purpose for which it was designated before that date.

Debt. CSHB 2685 would allow the state to issue debt for port transportation projects.

Contracting. The port commission could contract with a public or private entity to work on a port project in the TRZ and could pledge and assign to that entity all or part of the revenue the port authority received from assessments for the payment of the costs of the port project. If the entity had used TRZ funds to fund debt for the port project, the port authority could not rescind its pledge of funds to that entity until the entity had paid off or discharged its own debt.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2685 would create a vital economic development tool to fund necessary port infrastructure projects without raising motor fuels taxes, ensuring that the whole state would not have to pay for projects to benefit local interests. The bill would be a logical progression in the use of reinvestment zones for other transportation projects.

The bill would give port authorities another tool to help fund port projects while allowing counties or municipalities to use their own TRZ authority for a project. Layered TRZ authority would increase the funds available for port projects. The bill would apply to port authorities statewide.

OPPONENTS SAY:

Creating port authority TRZs represents an expansion of the troubling practice of using local property taxes to fund transportation projects that should be funded by the Texas Department of Transportation. The bill would decrease transparency in taxation and would reduce the amount of money local governments had available for vital services. Moreover, port authorities would not have sufficient taxation authority to pay for projects started under the bill.

NOTES:

The companion bill, SB 971 by Williams, was passed by the Senate by a vote of 31-0 on April 11.

The committee substitute differs from bill as filed by creating port authority transportation reinvestment zones as a separate entity in statute, subject to their own rules, instead of adding them to existing statute on TRZs.

SUBJECT: Amending the statutory durable power of attorney form

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Lewis, Farrar, Farney, Gooden, K. King, Raymond, S. Thompson

0 nays

2 absent — Hernandez Luna, Hunter

WITNESSES: For — Guy Herman, Travis County Probate Court; Joe Sanchez, AARP (*Registered, but did not testify:* Lin Morrisett; Maxcine Tomlinson, Texas New Mexico Hospice Organization)

Against — None

On — William Pargaman

BACKGROUND: Estates Code, sec. 752.051 specifies the language of the statutory durable power of attorney form. Durable power of attorney gives an agent or an attorney in fact powers with respect to a person's property and financial matters. These powers continue if the signer of the form, or principal, is disabled or incapacitated. Current statutory wording of the form grants the agent all the general powers listed on the form unless the principal crosses out the specific powers he or she does not wish to grant. Use of the form to grant durable power of attorney is optional; agents may make modifications to the statutory form.

DIGEST: CSHB 2918 would modify the statutory durable power of attorney form so that the principal was required to grant affirmatively any or all of 13 specific powers listed on the form by initialing a line in front of each power the principal chose to grant. The principal could also select to initial a line to grant all powers. To withhold a power from the agent, the principal could either not initial the line in front of the power or cross it out.

The bill would add statement that the principal should select an agent the principal trusts and that the agent's authority would continue until the

principal died or revoked the power of attorney, the agent died or was unable to act for the principal, or a guardian was appointed for the estate. The bill also would require that the form specify that the agent has the power to make gifts outright to or for the benefit of a person. The bill would require that the form include information for the agent on the agent's duties, liabilities, and termination of authority.

The bill would take effect January 1, 2014.

SUPPORTERS SAY:

CSHB 2918 would make the statutory durable power of attorney form pro-consumer by changing the selection of power from the current "opt-out" format to "opt in." The existing form gives all financial authority to an agent when the principal simply signs the form. The principal may not read or understand all of the powers being granted when using the opt-out form.

The opt-in form would require the principal to authorize explicitly the powers being granted. While most attorneys responsibly use this form, such forms are widely accessible on the Internet and people can easily and quickly sign a single line on the form without realizing its immense implications. Additionally, the clarifying language the bill would add to the form would emphasize to consumers the importance and impact of signing the form.

The type of opt-in form required by the bill is recommended as a best practice by the National Conference of Commissioners on Uniform State Laws. Because the majority of other states use this type of form, CSHB 2918 would improve portability and convenience for consumers moving to and from Texas.

OPPONENTS SAY:

CSHB 2918 would add confusion to the statutory durable power of attorney form and could increase the possibility of tampering. With the proposed form, a principal would have the option of leaving a line empty instead of crossing out the power if he or she did not wish to grant it. An agent could easily forge the principal's initials in the blank, whereas it is far more difficult to falsely include a power that has been crossed out. In addition, most people grant all powers to the agent and could simply skip to the signature line. It is possible that a person could sign the form without granting any powers to the attorney, causing confusion.

Despite what proponents claim, the current statutory form is already

portable outside of Texas because the differences between the forms are relatively minor. People accustomed to working with durable power of attorney forms recognize the meaning of either form.

NOTES:

The bill as filed would have changed Texas' statutory power of attorney form by adopting a template used nationally, called the Uniform Power of Attorney III. The committee substitute modifies the Texas power of attorney form to make the selecting of powers 'opt in.'

SUBJECT: Recovery of the enterprise resource planning project costs from vendors

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Hilderbran, Huberty, Oliveira, Smithee, Sylvester Turner

0 nays

2 absent — Harless, Menéndez

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Vijay George, Comptroller of Public Accounts; Ron Pigott, Comptroller of Public Accounts, TPASS Division)

BACKGROUND: Government Code, sec. 2101.001 includes in the definition of enterprise resource planning the administration of an agency's accounting, payroll, and other functions.

Under Government Code, sec. 2101.034, in providing support services for the implementation of the enterprise resource planning project, the comptroller is authorized to recover from a state agency the cost of implementing or use of the project.

DIGEST: HB 3116 would amend Government Code, sec. 2101.001 to add purchasing to the list of functions within the state's enterprise resource planning system.

The bill would also amend Government Code, sec. 2101.034 to allow the comptroller to also recover from a vendor participating in the statewide purchasing system the cost of implementing or use of the enterprise resource planning system.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 3116 would allow the comptroller's office to take the state's online purchasing system in-house. Currently, the Department of Information Resources (DIR) oversees the contract for the purchasing system known as TxSmartBuy. Its operation is covered by a 1.5 percent administrative fee charged to third-party vendors. DIR supports the transitioning of TxSmartBuy to the comptroller.

The bill would allow the comptroller to update the system and give it a more user-friendly interface. The administrative fee would pay for the system, and any remainder would be used by the comptroller to move small and mid-sized agencies to the state's enterprise resource planning system, known as the Centralized Accounting and Payroll/Personnel System (CAPPS).

The objective for the state's enterprise resource planning system would be to tie the together accounting, human resources, purchasing, and other programs and to facilitate their communication with each other. Currently, the process of transitioning state agencies to CAPPS is slow, with each individual agency having to secure appropriations to fund the transition. The bill would allow this transition process to occur within a more reasonable time frame.

Purchasing in the state would benefit because the bill would result in a more user-friendly TxSmartBuy program for state agencies and local governments. By increasing the use of state contracts for purchasing, the comptroller's office would have greater leverage to drive prices down on new contracts. In addition, by knowing what agencies and local government entities were buying, the state could better focus its efforts in contracting for those goods and services. By being a part of CAPPS, the purchasing process also would become part of the accounting and budgeting process, which would ensure the proper budgeting and approval of each purchase.

As more state agencies transition to CAPPS, the accounting functions within these agencies should improve. Agencies could track and manage contracts, bills for payment, assets and inventory, and receivables. They also could better plan and budget for projects.

CAPPS automates many human resources (HR) and payroll functions but is not an outsourcing of HR. Agencies would be able to track employees' time and the money paid to embedded contractors, allowing them to

determine if they were receiving good value for their service contracts.

OPPONENTS SAY:

Enterprise resource planning might not produce the beneficial organizational outcomes promised. Other states, in seeking to implement a new enterprise resource planning system, have faced implementation hurdles, such as project delays and lack of responsiveness from vendors. Similar issues in Texas could challenge the state's ability to gain the benefits intended by HB 3116.

SUBJECT: Designating a portion of SH 358 as the Peace Officers Memorial Highway

COMMITTEE: Transportation — favorable, without amendment

VOTE: 11 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, McClendon, Pickett, Riddle

0 nays

WITNESSES: For — (*Registered, but did not testify:* Snapper Carr, City of Corpus Christi; Melinda Griffith, Corpus Christi Police Officers Association; Charley Wilkison, Combined Law Enforcement Associations of Texas)

Against — none

On — (*Registered, but did not testify:* John Barton, Texas Department of Transportation)

DIGEST: HB 3831 would designate part of State Highway 358, from Interstate 37 to State Highway 286 in Nueces County, as the Peace Officers Memorial Highway. The designation would be in addition to any other designation.

The bill would require the Texas Department of Transportation to design, construct, and erect markers indicating the designation at each end of the highway and at appropriate intermediate sites along the highway. The requirement would be subject to sec. 225.021(c), under which the department is not required to design, construct, or erect a marker unless a grant or donation of funds is made to cover the cost.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: HB 3831 would honor Lt. Stuart Alexander and other peace officers who have sacrificed their lives while in service to their communities by designating a portion of State Highway 358 as the Peace Officers Memorial Highway. Lieutenant Stuart Alexander, a 20-year veteran of the Corpus Christi Police Department, was hit and killed on State Highway 358 while in the line of duty.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The House Transportation Committee recommended HB 3831 be sent to the House Local and Consent Calendar on April 16 but reconsidered the vote in committee on April 23.

HB 695 by Phillips, which would require highway designations to be funded solely through grants or donations, was passed by the House by a vote of 149-0 (1 present, not voting) on April 4 and is scheduled for a public hearing in the Senate Transportation Committee on May 1. HB 695 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUBJECT: Parole reconsideration for aggravated sexual assault, capital murder

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — Parker, White, Allen, Riddle, J.D. Sheffield, Toth

0 nays

1 absent — Rose

WITNESSES: For — Doots Dufour, Diocese of Austin; Andy Kahan, victim advocate City of Houston; James Dreymala, Linda Drummond, Michelle Wilson; (*Registered, but did not testify:* Mark Clark, Houston Police Officers' Union; Chris Kaiser, Texas Association Against Sexual Assault; James Parnell, Dallas Police Association; Steven Tays, Bexar County Criminal District Attorney's Office; Justin Wood, Harris County District Attorney's Office; Elaine Dreymala)

Against — (*Registered, but did not testify:* Rebecca Bernhardt, Texas Defender Service)

BACKGROUND: Under Government Code, sec. 508.145(d)(1), inmates serving time for certain serious and violent offenses, including aggravated sexual assault are not eligible for parole until their actual calendar time served, without consideration of good conduct time, equals one-half of their sentence, or 30 years, whichever is less, with a minimum of two years. Under sec. 508.145(b), an inmate serving a life sentence for a capital felony is not eligible for release on parole until actual calendar time, without consideration of good conduct time, equals 40 years.

Government Code sec. 508.141(g) requires the Board of Pardons and Paroles to adopt a policy establishing the dates the board may reconsider for release inmates who have been denied release on parole or mandatory supervision. For inmates convicted of aggravated sexual assault and capital murder, the board can reconsider them after an initial denial anytime between one and five years.

Penal Code sec. 22.021 makes aggravated sexual assault a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine

of up to $10,000).

The current punishment for a capital felony is death or life without parole, except that juveniles certified to stand trial as adult for a capital felony can receive a sentence of life in prison. However, before life-without-parole was established in 2005 as possible punishment for capital felonies, offenders could receive life in prison, which carried with it the possibility of parole.

DIGEST:

HB 1337 would allow the Board of Pardons and Paroles to delay reconsideration for parole after an initial denial for up to 10 years for offenders convicted of aggravated sexual assault and offenders serving a life sentence for a capital felony.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1337 would ensure that a reasonable amount of time elapsed between parole considerations for persons who committed capital felonies and aggravated sexual assault, some of the most the heinous crimes. The need for these changes has been brought to light by the situations being faced by some families of murder victims, including those tragically affected by the 1970s Houston Mass Murders, who every few years have to protest the potential parole of the person involved in the murder of their loved ones.

Under current law, once offenders convicted of aggravated sexual assault and capital murder become eligible for parole and are denied, they must be reconsidered every one to five years. A general practice of the Board of Pardons and Paroles policy is to set off cases, even for egregious offenses, for three years. Because of this, some families have to begin the painful process of protesting potential parole every two-and-a-half years.

Having these offenders come up for parole consideration so frequently can be traumatic and burdensome for victims, who want to weigh in with the parole board on the decision. Victims and their families often relive the crime and feel victimized each time an offender is considered for parole. One family has dealt with this traumatic and heartbreaking situation 20 times since 1974.

HB 1337 would address this injustice by allowing the parole board to set off consideration in these cases for up to 10 years. The bill would apply only to aggravated sexual assault and capital murder, two of the most

egregious, heinous crimes for which parole is an option. Allowing these cases to be considered every 10 years could bring a small measure of peace to the families of victims. A maximum 10-year period between parole considerations would be reasonable given the nature of these horrific crimes, while still holding out the possibility of parole to offenders, giving them an incentive for rehabilitation and good behavior in prison.

The parole board still would have discretion to handle these cases individually and appropriately. The bill would change only the outside limit on how long the board could wait before reconsidering a case, but the board would continue to decide how long a case would be set off before reconsideration. The board could set off a case anywhere from one to 10 years, as it deemed appropriate. When the cases were considered, the board could continue as it does under current law to decide whether to release the offender on parole or to deny release.

Allowing the parole board to set off consideration of appropriate cases for longer periods than under current law would allow the board to focus its resources on other cases.

OPPONENTS SAY:

Current law allowing up to five years between parole consideration creates a fair system of review. Allowing the parole board to delay parole consideration for up to 10 years after an initial decision for some offenders could be too long. Aggravated sexual assault and capital felony offenders now serve multiple decades in prison before being considered for parole the first time. If subsequent parole reviews can be put off for a decade at a time, some offenders could receive very limited, if any, additional chances at parole. Factors affecting parole decisions can change, and being reviewed for possible parole can be an incentive for offenders to work at rehabilitation and to demonstrate good behavior in prison.

SUBJECT: Cable operators' attachments to electric co-op utility poles

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Hilderbran, Huberty, Oliveira, Smithee

0 nays

2 absent — Menéndez, Sylvester Turner

WITNESSES: For — Jeff Burdett, Texas Cable Association; Eric Craven, Texas Electric Cooperatives

Against — None

On — Brian Lloyd, Public Utility Commission of Texas

DIGEST: HB 3355 would add ch 252 to the Utilities Code to provide the framework for cable operators to make attachments to distribution poles owned or controlled by electric cooperatives.

Contracts. The bill would require that cable operators and electric co-ops establish a written pole attachment contract spelling out the rates, terms, and conditions for pole attachments, including the cooperative's application and permitting processes. The bill would require contracts to be just and reasonable and negotiated in good faith. A request to negotiate a new pole attachment contract between a cable operator and an electric co-op would be in writing.

Negotiation and mediation. The bill would provide a mechanism of negotiation and mediation if a cable operator and an electric cooperative failed to reach a contractual agreement. The existing contract would remain in force if the parties did not reach a new agreement before the expiration of the contract, or during the 180-day negotiation or 90-day mediation period provided by the bill, and any mutually agreed upon extensions.

HB 3355 would require a cable operator and an electric co-op enter

mediation if they could not agree on contract extension terms. The mediation would take place in a county in which the electric cooperative had distribution poles. The cable operator and the electric cooperative would split the costs of the mediation. If mediation failed, the cable operator or the electric cooperative could request that a court resolve the disagreement.

Rates, terms, and conditions. HB 3355 would require that in determining rates, terms, and conditions, the interests and benefits of the customers and potential customers of the electric co-op and the cable operator were considered, as well as safety standards and the maintenance and reliability of both electric distribution and cable services.

Attachments to poles, transfer of attachments, abandoned Attachments. The bill would allow an electric cooperative to deny access to a pole if there was insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

An electric co-op would be required to notify a cable operator when the co-op was installing a new pole to replace an existing pole with a cable attachment. The co-op would provide a date the cable operator would remove its attachment and transfer the attachment to the new pole. The bill would allow the co-op to transfer the attachments at a cost to the cable company if the cable operator failed to transfer the attachments within 30 days of the date specified on the electric co-op's notice. A cable operator would indemnify, defend, and hold harmless the co-op from and against all liability for the removal and transfer of a pole attachment, except for personal injury or property damage arising from gross negligence or willful misconduct of the co-op during the removal and transfer process.

Cable operators would be required to remove its abandoned pole attachments from a co-op's pole within 60 days after the date the cable operator received a written request for removal of the pole attachment. The co-op would be able to grant the cable operator an extension past 60 days. The bill would allow an electric cooperative to remove and dispose of an attachment at the cable operator's expense if the attachment was not removed during the 60-day period or any extension granted by the electric cooperative.

An electric co-op could require that a cable operator post a security instrument in an amount reasonably sufficient to cover the potential cost to the co-op of removal and disposal of abandoned pole attachments. HB

3355 would require a cable operator to indemnify, defend, and hold harmless the co-op from all liability for the removal, use, sale, or disposal of abandoned pole attachments, except for personal injury or property damage arising from gross negligence or willful misconduct of the co-op.

Rights-of-way. A cable operator would obtain all rights-of-way and easements necessary for the installation, operation, and maintenance of the operator's pole attachments. Electric cooperatives would not be required to obtain or expand a right-of-way or easement to accommodate a pole attachment requested by a cable operator. An electric cooperative could not be held liable if the cable operator did not obtain a necessary right-of-way or easement. The bill would require the cable operator to indemnify, defend, and hold harmless the electric co-op from any liability from the cable operator's failure to obtain a necessary right-of-way or an easement for a pole attachment.

Applicability, limitations, effective date. The bill would not apply to pole attachment contracts entered into before September 1, 2013. Contracts between electric cooperatives and cable operators before September 1, 2013 would be governed by the law in place before that date.

HB 3355 would apply only to attachments to poles owned or controlled by electric cooperatives and would not apply to pole attachments regulated under 47 U.S.C., sec. 224 (which concerns Federal Communications Communication regulation of pole attachments by investor-owned utilities). If a court determines that HB 3355 constitutes certification under 47 U.S.C., sec. 224 then the chapter would become unenforceable.

The bill would provide that the proposed state Utilities Code, ch. 252 could not be construed to subject electric cooperatives to 47 U.S.C., sec. 224. The bill would not authorize a department, agency, or political subdivision of the state to exercise enforcement or regulatory authority over attachments to electric cooperative poles.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

HB 3355 is agreed upon legislation between cable operators and electric cooperatives and has been endorsed by trade organizations representing both groups. Generally, electric cooperative and cable operators have been

able to amicably settle pole attachment disputes. But HB 3355 would provide a framework to further lessen contractual disputes and help ensure better coordination between cable operators and electric cooperatives in the field.

The bill would be good for consumers by encouraging both cable operators and electric cooperatives to use the same poles and not duplicate infrastructure.

Electric cooperatives are elected by their membership and would provide ample oversight of the legislation to ensure that costs were controlled.

OPPONENTS SAY:

Although the bill would include some consumer protections by requiring contract terms be just and reasonable, implementation of HB 3355 should be monitored to ensure that neither side, the electric cooperatives nor the cable operators, pass along unreasonable costs to ratepayers or subscribers.

SUBJECT: Paying for relocating utilities for toll-road projects

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Harper-Brown, Lavender, McClendon, Riddle

1 nay — Pickett

1 absent — Y. Davis

WITNESSES: For — Bob Digneo, AT&T; Richard Lawson, Verizon (*Registered, but did not testify*: Todd Baxter, Time Warner Cable; Jeff Burdett, Texas Cable Association; Jose Camacho, Texas Telephone Association; Walt Jordan, Oncor; Blanca Laborde, TW Telecom; Chris Miller, AECT; Leo Muñoz, Comcast; Jake Posey, Centerpoint Energy; Patrick Reinhart, El Paso Electric Co.)

Against — None

On — John Barton and Phil Wilson, Texas Department of Transportation

BACKGROUND: HB 2702, enacted by the 79th Legislature in 2005, amended the Transportation code by adding secs. 203.092 (a) (3) (a-1), (a-2), and (a-3), which state that the costs to relocate a utility facility related to the toll roads are borne equally between the utility and the Texas Department of Transportation (TxDOT).

DIGEST: CSHB 2585 would extend to September 1, 2017 from September 1, 2013 the 50-50 cost-sharing arrangement between the Texas Department of Transportation and utilities that had to move their infrastructure in connection with a toll-road construction, expansion, or conversion.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS CSHB 2585 would extend the cost-sharing arrangement between TxDOT

SAY:

and utilities that has worked well to expand toll-road construction, encourage development of services Texas needs and wants, and help relieve costs to small municipalities.

In recent years, Texas has expanded its roads and utility services to fast-growing areas and must continue to meet rising demand. Utility relocation is done most efficiently when the cost is shared by interested parties that also share the goal of keeping a lid on costs. The bill would allow utilities to devote their capital investments to expanding their networks and improving their services. Utilities that can focus on meeting the high demand for faster broadband, wireless communication, electricity, and other services can contribute more to the state's economic development.

The cost-sharing arrangement would not only extend to private companies but provide relief for municipalities that also bear the burden of moving utilities to accommodate new toll roads. The cost-sharing arrangement has worked well for Texas, its citizens, and its small communities and would continue to benefit them four more years.

OPPONENTS SAY:

CSHB 2585 would continue a cost-sharing arrangement that was not intended to be permanent and should be allowed to sunset. Historically, utilities, which pay nothing for infrastructure right-of-way to the state, have paid relocation costs on all roads. Legislation that instituted cost-sharing was passed in 2005 to expedite toll road projects and provide a temporary incentive for utilities to relocate in a timely manner. It is no longer necessary to continue to subsidize this aspect of utilities' cost of doing business, which they pay on non-toll roads, and the state never received binding cooperation standards from the utilities in the first place. The cost-sharing is just a subsidy to the utilities and a cost to the state, and it should be allowed to expire as intended.

The state's portion of the relocation costs, according to TxDOT, will be roughly $3.5 million in 2014 and $6 million to $8 million per year thereafter. Public and private utilities have years of advanced notice to factor in relocation costs that would result from the state's transportation plan, and it is not necessary for the state to continue sharing the cost.

NOTES:

The committee substitute differs from the bill as filed by extending the cost-sharing provision to September 1, 2017, rather than removing the expiration date as in the original.

SUBJECT: Providing a tax credit for certain research and development activities

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 5 ayes — J. Davis, Bell, Murphy, E. Rodriguez, Workman

0 nays

4 absent — Vo, Y. Davis, Isaac, Perez

WITNESSES: For — Richard A. (Tony) Bennett, Texas Association of Manufacturers; William Blaylock, Texas Instruments, Dale Craymer, Texas Taxpayers and Research Association; Bill Hammond, Texas Association of Business; Mike Honkomp, Bell Helicopter; Dan Kostenbauder, Hewlett Packard Company; Tom Kowalski, Texas Healthcare and Bioscience Institute; (*Registered, but did not testify*: Kathy Barber, NFIB Texas; Chrissy Borskey, General Electric; Sabrina Brown, Dow Chemical; Raif Calvert, ICUT; Kerry Cammack, Honeywell; Dana Chiodo, Raytheon; Jeff Clark, The Wind Coalition; Brent Connett, Texas Conservative Coalition, Sandy Dochen, IBM; Jeffrey Dodon, The Boeing Company; Jack Erskine, Ebay; Deborah Giles, SHI International, Inc.; Fred Guerra, Dallas Regional Chamber; Patrick Hogan, Texas Technology Consortium; Lisa Hughes, AT&T; Caroline Joiner, National Instruments; Dawn Jones, Intel Corporation; Max Jones, The Greater Houston Partnership; John Kroll, Gemalto, Inc.; James LeBas, Rackspace Hosting; Mike Meroney, Huntsman Corporation; Wendy Reilly, TechAmerica; Jennifer Rodriguez; Lockheed Martin Aeronautics Company; Drew Scheberle, Greater Austin Chamber of Commerce; Carlton Schwab, Texas Economic Development Council; Chris Shields, Greater San Antonio Chamber of Commerce; Daniel Womack, Texas Chemical Council; Geoff Wurzel, TechNet)

Against — Dennis Borel, Coalition of Texans with Disabilities; Eileen Garcia, Texas Forward; Richard Lavine, Center for Public Policy Priorities; Ted Melina Raab, Texas AFT; (*Registered, but did not testify*: Rene Lara, Texas AFL-CIO, Susan Milam, National Association of Social Workers, Texas Chapter)

On — Jon Hockenyos; (*Registered, but did not testify*: Guy Diedrich,

Texas A&M University System; Brad Reynolds, Comptroller of Public Accounts; Ed Warren, Comptroller of Public Accounts)

DIGEST:

CSHB 800 would provide either a sales tax exemption or a franchise tax credit to entities performing qualified research and development activities in Texas. The bill would use the definitions for "research," and "qualified research" that appear in federal tax law, except that the bill would apply only to research conducted in Texas.

Sales tax exemption. The bill would exempt from sales taxes the sale, storage, or use of depreciable tangible personal property used in qualified research if the property was sold to, stored, or in some way used by a person engaged in qualified research. "Depreciable tangible personal property" would be defined as personal property with a useful life greater than one year and which can be depreciated according to generally accepted accounting principles. The person who bought, stored, or used the property could not claim a franchise tax credit for research and development activities under CSHB 800.

Franchise tax credit. The bill would add Tax Code, ch. 171, subch. M to provide for a franchise tax credit to entities performing qualified research. Entities that claimed a sales tax credit could not also claim a franchise tax credit for the same tax period.

With some exceptions, the franchise tax exemption would equal 5 percent of the difference between an entity's qualified research expenses during the period on which the tax report was based and 50 percent of the average amount of qualified research expenses over the three previous tax reporting periods. Another franchise tax credit would be available to entities that contracted with a public or private higher education institution to perform qualified research.

Report. The comptroller's report on the effect of certain tax provisions delivered to the governor and Legislature before each legislative session, would have to include:

- estimates of the number of persons receiving the sales tax exemption under the bill and the total amount of those exemptions;
- an evaluation of the effect of the sales tax exemptions in combination with franchise tax credits on research and development activity in the state;

- the total number of entities that applied for franchise tax credits;
- the total amount of franchise tax credits;
- the total amount of credits carried forward;
- the amount of qualified research performed in the state;
- employment in research and development in the state;
- economic activity in the state; and
- state tax revenues.

The bill would take effect January 1, 2014. The sales tax credit would not apply to sales tax liability accruing before that date, and the franchise tax credit would apply only to a franchise tax report originally due on or after that date.

SUPPORTERS SAY:

CSHB 800 would reduce the tax burden on research and development activities in Texas and encourage new investments in the state. Research and development activities create high-paying jobs and new technologies. A report commissioned by Texans for Innovation found that the bill would lead to $1.3 billion in additional research and development activity in a relatively short time frame, which would result in $3 billion in total economic activity. The interim Committee on Manufacturing heard from small businesses, which were asking for these credits, as well.

Since Texas discontinued its research and development tax credit in 2006, the state's share of business-funded research and development activity has declined. Today, Texas is one of four states that does not offer a research and development incentive of some type, putting the state at a disadvantage. Massachusetts offers a 10 percent credit for qualified research expenses, as well as a sales tax exemption. Even though Texas is three times the size of Massachusetts, the research and development economy of Massachusetts is the same size as that of Texas. A research and development tax credit would incentivize this state's manufacturing industries by encouraging innovation and efficiency in applying new technologies and producing new products. The Texas Healthcare & Bioscience Institute and those within the life sciences industry represent the types of groups that would take advantage of the incentive.

The bill also would incentivize partnerships between the private sector and higher education institutions, which would expand opportunities for innovation and learning. The state has several programs that send state tax dollars into its colleges and universities for research. A better concept would be to incentivize the vastly larger private sector to send its funds

into Texas schools to encourage teachers and students to come up with new patents and build the state's capacity for research and development. California offers a research and development credit of upwards of 24 percent for entities contracting with higher education institutions. Incentives like this work, as California has 23 percent of the nation's research and development, whereas Texas has about 5 percent. In addition, with the sequester affecting federal research dollars going to Texas universities, the bill would provide an opportunity for higher education to receive money from the private sector.

By allowing companies to choose between the sales tax exemption and franchise tax credit, the greatest number of businesses would be incentivized. Some companies would benefit from the sales tax credit and others would benefit primarily from franchise tax relief. CSHB 800 would align with the definitions in federal tax law, which would provide simplicity to these taxpayers.

The committee substitute added language that would limit the sales tax credit to the use of personal property, which would consist of software and equipment. Retail companies in Texas could claim the sales tax credit only if they used software and equipment for qualified research. Companies want reliability and sustainability. If they move to Texas, they want to know they will be able to take advantage of tax credits into the future.

Under the proposed incentive, if Texas were to forego $100 million in taxes, it would only be in a case where the state had at least $2 billion in increased research and development activity. Also, the bill would only provide benefits when a firm's research and development activity was greater than half of the average activity over the previous three years. The 83rd Legislature is already taking steps to restore cuts to social services from the last session, and legislators advocating passage of CSHB 800 also have supported measures like HB 5 by Aycock, which would strengthen the state's emphasis on career training. Texas has never had as much revenue as it does today, and now is the time to give tax relief to taxpayers.

The fiscal note does not account for the dynamic consequences that would accompany the tax credits and exemptions in CSHB 800, which would entice businesses to conduct research and development activities here. The bill would lead to follow-on capital being invested in Texas. If a company moved its research and development activities to the state, many of its

other business functions, such as sales and distribution, might follow. Other businesses, such as a supplier to a the company moving its research and development here, also could come to the state.

OPPONENTS SAY:

Texas should take advantage of its improved fiscal situation to restore funding for public education, social services, and other priorities instead of offering more tax breaks to big business. According to estimates from the comptroller's office, corporations with fewer than 100 employees accounted for only around 12 percent of the old research and development tax credits. Historically, tax credits of the sort proposed by CSHB 800 have been used primarily by well established companies, not start-ups.

It is noteworthy that under the old tax credit, Dallas and Travis counties accounted for 60 percent of the total credits taken. Also, Texas' national ranking for both total spending and intensity related to research and development remained relatively constant over the last two decades. This occurred before, during, and after availability of the old tax credit. There is no reason to believe the tax breaks under this bill would be more successful in spurring research and development and associated economic development in Texas. The money also would be better spent on investments in workforce training and infrastructure because these are also factors companies consider before moving to a state.

Even in the improved economic climate, Texas cannot afford the cost of the tax breaks and exemptions proposed in the bill. According to the Legislative Budget Board (LBB) the cost of the proposed tax credits and exemptions to general revenue would be $221 million in fiscal 2014-15. The effects of the bill would include a further reduction of $18 million in franchise tax revenue flowing into the Property Tax Relief Fund, which was established by the Legislature in 2006 to offset reductions of school property taxes. These lost revenues would have to be offset with general revenue funds. When the state budget comes to the floor of the Texas Legislature, a lawmaker is not allowed to introduce a new cost item into the budget unless something else can be removed. This bill should include a means for paying for the expense of these tax credits and exemptions.

OTHER OPPONENTS SAY:

Like the federal research and development tax credit, this bill should include a Sunset date for the proposed tax credits to force the Legislature to review the data and decide if the tax credit was effective and efficient.

Under the state's previous research and development tax credit, retail trade

food stores and retail trade home furniture companies claimed credits. The bill should be changed to focus on the industries deemed a priority.

NOTES:

The committee substitute differs from the bill as filed in that CSHB 800 would:

- add a definition for depreciable tangible personal property;
- require the comptroller to include certain analyses regarding the sales and franchise tax credits within its biennial report on certain tax provisions;
- add an exception to how the franchise tax credit would be calculated when the taxable entity contracted with a higher education institution in the state; and
- changed the bill's effective date from October 1, 2013 to January 1, 2014.

According to the LBB, CSHB 800 would have a negative impact on general revenue funds of $221.16 million in fiscal 2014-15. The bill also would result in a direct revenue loss to the Property Tax Relief Fund of $18 million over the same period. There would be a corresponding loss of sales tax revenue to local taxing jurisdictions.

The companion bill, SB 859 by Deuell, was referred to the Senate Finance Committee's Subcommittee on Fiscal Matters on March 18.

SUBJECT: Changing how certain freestanding ERs advertise, requiring notices

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays — None

1 absent — Coleman

WITNESSES: For — AJ Padilla (*Registered, but did not testify*: Brad Shields, Texas Association of Free-Standing Emergency Centers; David Williams, Texas Nurse Practitioners)

Against — None

On — None

BACKGROUND: Health and Safety Code, sec. 241.006 authorizes the Department of State Health Services (DSHS) to review and coordinate the placement, format, and language of postings required in hospitals.

Health and Safety Code, ch. 254 defines "freestanding emergency medical care facility" as a facility, structurally separate and distinct from a hospital that provides emergency care. It exempts from certain licensing requirements facilities that are owned, operated, or connected to a hospital and regulated in the same way.

Business and Commerce Code, ch. 17 defines deceptive trade practices, makes unlawful false, misleading, or deceptive acts in trade and commerce, and provides remedies.

DIGEST: HB 1376 would prohibit a hospital-affiliated, freestanding emergency medical care facility (freestanding ER) from advertising or holding itself out as something other than an emergency room (ER) if it charged the same rates as a hospital ER in the same region or a region with comparable rates.

The DSHS would have to adopt rules requiring a hospital-affiliated, freestanding ER to conspicuously post a notice informing potential patients that the facility was an ER and charged comparable rates. The DSHS would have to adopt rules related to these notices as soon as practicable after the effective date.

A freestanding ER not in compliance with these advertising and posting requirements would be considered a false, misleading, or deceptive practice under the Texas Deceptive Trade Practices-Consumer Protection Act. A public or private remedy available for deceptive trade practices could be used to enforce these requirements.

This bill would take effect on September 1, 2013.

SUPPORTERS SAY:

HB 1376 would help prevent consumer confusion about hospital-affiliated freestanding ERs. These facilities are not attached to hospitals and look similar to urgent-care clinics, but patients are charged at hospital ER rates. As a result, consumers are receiving much higher bills than expected. By prohibiting certain advertisements and requiring conspicuous notices, this bill would make it easier for consumers to understand that they were in an emergency department and would be billed accordingly.

These regulations are necessary because current laws are insufficient to prevent consumer confusion. Notices explaining that the clinic is an ER are often written in small print and not conspicuously posted. This bill would standardize notification requirements and ensure that postings were easily readable and consumer-friendly.

OPPONENTS SAY:

This bill would create unnecessary regulations because consumers are already adequately informed that they are in an ER. These facilities display signs explaining their hospital affiliations, and staff members often verbally inform a patient that the facility is an emergency department and explain potential out-of-pocket costs. Moreover, these facilities are already heavily regulated and additional regulation would make it more difficult for hospital-affiliated freestanding ERs to provide a valuable service.

OTHER OPPONENTS SAY:

HB 1376 would address only a small part of a much larger problem. The issue of consumer confusion is not limited to hospital-affiliated freestanding ERs. In Texas, there is no law defining urgent care, so a variety of entities operate freestanding clinics. These facilities are equipped for different levels of medical care and charge substantially

different rates but often look very similar to consumers. So, although HB 1376 is a step in the right direction, additional regulations are needed to prevent consumer confusion.

SUBJECT: Reducing STAAR testing in grades 3 through 8

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

WITNESSES: For — Barbara Beto, Texas PTA; Scott Hochberg; Guy Sconzo; Humble ISD; (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Ramiro Canales, Texas Association of School Administrators; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Lindsay Gustafson, Texas Classroom Teachers Association; Dwight Harris, Texas AFT; Ken McCraw, Texas Association of Community Schools; Don Rogers, Texas Rural Education Association; Julie Shields, Texas Association of School Boards; Theresa Trevino and Laura Yeager, Texans Advocating for Meaningful Student Assessment; Paula Chaney Trietsch; Maria Whitsett, Texas School Alliance; Howell Wright, Texas Association of Mid-Size Schools)

Against — Socar Chatmon Thomas; Zenobia Joseph (*Registered, but did not testify:* Bill Hammond, Texas Association of Business; Justin Yancy, Texas Business Leadership Council)

On — Kathi Thomas; (*Registered, but did not testify:* David Anderson and Gloria Zyskowski, Texas Education Agency)

BACKGROUND: The 81st Legislature in 2009 enacted HB 3 by Eissler, which replaced the Texas Assessment of Knowledge and Skills (TAKS) with a new series of assessments in grades 3-8. The State of Texas Assessments of Academic Readiness (STAAR) exams were administered for the first time in the spring of 2012.

Students are assessed every year in reading and mathematics. Students in grades 4 and 7 take a writing test; students in grade 5 take a science test; and students in grade 8 take science and social studies tests.

DIGEST:

CSHB 866 would reduce State of Texas Assessments of Academic Readiness (STAAR) testing requirements for students in grades 3-8 who met certain performance thresholds. It would eliminate the requirement that students in grades 4, 6, and 7 be assessed in mathematics and reading. It also would eliminate the writing exams in grades 4 and 7 and the grade 8 social studies exam.

Third graders would continue to take mathematics and reading exams. Fifth graders and eighth graders would continue to take mathematics, reading, and science exams.

In addition to a scale score indicating satisfactory performance, the Texas Education Agency (TEA) would determine for each required test a minimum satisfactory adjusted scale score, designed to predict within a 3 percent margin of error, that a student would achieve satisfactory performance on an assessment in the same subject the following year.

Students who did not achieve the performance threshold on any of their grade 3 or grade 5 STAAR tests would be required to take the same subject-area tests in grades 4 and 6. Students who failed in grade 6 to meet a performance threshold would be retested in the same subject in grade 7.

TEA would be required to develop new science tests to be administered in grades 6 and 7 to students who failed to meet performance thresholds in grades 5 and 6, respectively.

CSHB 866 would give school districts and open-enrollment charter schools discretion to administer the appropriate grade-level tests to any student in order to determine whether students who were not required to test were performing at a satisfactory level. These optional tests would be administered in the same manner and at the same cost as tests administered to students who were required to test. TEA could not count the scores of students administered optional tests for campus or district accountability measures.

If any portion of the bill violated federal testing requirements, the commissioner of education would be required to seek waivers from the federal requirements.

CSHB 866 would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect

September 1, 2013 and apply beginning with the 2013-14 school year.

SUPPORTERS SAY:

CSHB 866 would allow high-performing elementary and middle school students to skip STAAR testing in grades 4, 6, and 7. For example, if a child performed satisfactorily on the grade 3 STAAR mathematics test, he or she would not be required to take the corresponding test in grade 4. This would reduce the number of tests administered to high-performing students from 17 to as few as eight.

The bill also would addresses excessive testing of all students by eliminating writing tests in grades 4 and 7, as well as the grade 8 social studies test. Students can best improve their writing through classroom assignments graded by teachers instead of through a standardized exam scored by temporary workers for a testing contractor. Social studies is not an exam required to be administered under federal law. Even if a provision of CSHB 866 did conflict with federal requirements, the bill would instruct the commissioner to seek a waiver.

TEA data from the TAKS program show that students who performed at a certain scale score level in one year tended to perform at similar levels in the following school year, with less than a 3 percent margin of error. For example, data from Humble ISD show that 87 percent of students who passed their TAKS reading test in 2009 also passed their TAKS reading test the previous year. These data show that it is not necessary to test high-performing annually to ensure that they are performing at grade level. These resources would be better spent focusing on kids who have difficulty meeting grade-level assessment standards and need to test every year.

The bill would allow high-performing students to focus their time and energy on learning new concepts instead of focusing every year on a test that they are expected to pass with a great deal of statistical certainty. Nevertheless, the bill would give school districts the option of testing any student in any available subject area test at any grade level to ensure they were keeping pace in the years they were not required to test.

The reduced testing requirements in CSHB 866 would save the state $13.4 million in fiscal 2014-15, according to Legislative Budget Board (LBB) estimates. There would be additional savings from districts that opted not to administer discretionary tests, although the LBB could not estimate that amount.

OPPONENTS SAY:

Texas should not back away from its expectations that all students in grades 3 through 8 meet high standards every year in all the subjects required under the new, more rigorous STAAR program. Annual testing requirements help ensure that teachers are following the state curriculum and that students are learning the knowledge and skills they are expected to master at each grade level.

Eliminating the two writing assessments and the social studies test in grade 8 would deprive parents of important information about how their students were performing in school. It also could leave students less prepared for high school, where they will be required to meet end-of-course assessment requirements in both subject areas.

CSHB 866 would create a stigma for lower-performing students who had to test in grades 4, 6, and 7. Despite the efforts of school districts to keep this information confidential, as they are required to under federal law, students could easily determine who was required to test in the grades when testing was not mandatory for everyone, which could lead to classmates being labeled as "smart" or "dumb."

The LBB estimates that the state would spend $3.8 million in fiscal 2014 and $2.6 million in subsequent years developing science assessments that do not currently exist for students in grades 6 and 7. The fiscal note also estimates that TEA would lose $12.6 million annually in federal funds if the bill violated federal law and the commissioner failed to get a waiver from federal testing requirements.

NOTES:

Unlike the committee substitute, HB 866 as introduced would have preserved the grade 8 social studies test and replaced the writing tests in grades 4 and 7 with writing tests in grades 5 and 8.

The LBB estimates the bill's reduced assessment requirements would save the state $13.4 million in fiscal 2014-15.

SUBJECT: Standards for transmission and distribution power lines

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira, Smithee

0 nays

3 absent — Giddings, Hilderbran, Sylvester Turner

WITNESSES: For — Eric Craven, Texas Electric Cooperatives; John W. Fainter Jr., Association of Electric Companies of Texas Inc.; Mark Zion, Texas Public Power Association; (*Registered, but did not testify*: Richard A. Bennett, Texas Association of Manufacturers; Shanna Igo, Texas Municipal League; Parker McCollough, Entergy Texas, Inc.; Robert Nathan, CPS Energy)

Against — None

On — (*Registered, but did not testify*: Margaret Pemberton, Public Utility Commission)

BACKGROUND: In its discussion of transmission and distribution power lines in *Traxler v. Entergy Gulf States, Inc*., 376 S.W.3d 742 (2012), the Texas Supreme Court noted that the Legislature has "declined to include a statutory definition giving a more technical and distinguishing meaning to 'transmission' and 'distribution.' If the Legislature intended to distinguish the terms, we believe it would have done so."

DIGEST: HB 898 would amend Utilities Code, sec. 181.041 to provide a definition for distribution and transmission lines. A distribution line would be a power line operated below 60,000 volts. A transmission line would be a power line operated at 60,000 volts or more.

The bill would modify Utilities Code, sec. 181.045(a) to conform to the definitions of distribution line and transmission line.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

By providing clear definitions of distribution power line and transmission power line, HB 898 would ensure that Texas electric utilities were not required to rebuild a significant part of the electrical distribution systems that cross roads because of a court ruling. Instead, Texas utilities could continue to serve Texas homes and businesses at the ground and road clearance heights recommended by National Electrical Safety Code (NESC) standards, which have been used for decades.

The Texas Supreme Court in the *Traxler v. Entergy Gulf States, Inc*. interpreted transmission lines and distribution lines to have the same meaning, resulting in all power lines, including distribution lines crossing neighborhood streets, to have at least a 22-foot clearance. The NESC standards allow for distribution power lines, the lower voltage lines that generally distribute power to nonindustrial businesses and homes, to have a clearance of 18.5 feet above a road. The NESC standards require transmission lines to have a clearance of at least 22 feet above a road. Transmission lines are the higher voltage lines that transport electricity from power plants to substations and between substations.

Without the clarifying definitions provided by HB 898, electric utilities would have to raise distribution lines to 22 feet at every roadway that a distribution line crossed. Because of the national standards, state highways and major roadways already have distribution lines at or above the 22-foot standard, but lines crossing minor roads are lower.

The cost of failing to pass HB 898 would be immense. For example, the state's electric cooperatives would have to inspect distribution lines at more than 300,000 roadway crossings and raise the clearance height of any line less than 22 feet above a road. Inspection would likely cost more than $6 million and last 16 months to determine whether lines met the 22-foot requirement. The electric co-op association estimated it would cost $100 million to raise the lines, which would include the cost of labor and about 77,000 taller utility poles. Electric cooperatives serve about 10 percent of the customers in Texas, and the estimate does not include the costs to municipal electric utilities and investor-owned electric utilities. Ultimately, failure to pass HB 898 could cost the ratepayers hundreds of millions of dollars, even though Texas' distribution system is safe and

complies with national standards.

HB 898 would clarify the Utility Code, providing assurance and guidance to electric utilities as they continue to expand and build the state's power infrastructure.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The companion bill, SB 349, was passed by the Senate 31- 0 on March 13 and reported favorably by the House Committee on State Affairs on April 17.

SUBJECT: Increasing the penalty for reckless driving

COMMITTEE: Transportation — favorable, without amendment

VOTE: 10 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, Pickett, Riddle

0 nays

1 absent — McClendon

WITNESSES: For — Charles Laws; Toni Laws (*Registering, but not testifying:* Terri Hall, Texas TURF; Steven Tays, Bexar County Criminal District Attorney's Office)

Against — None

BACKGROUND: Under Transportation Code, sec. 545.401, a person commits a reckless driving offense by driving a vehicle in willful or wanton disregard for the safety of persons or property. The offense is a misdemeanor punishable by a fine of $200 or less, confinement in county jail for up to 30 days, or both.

DIGEST: HB 955 would increase penalties for the offense of reckless driving if the offense resulted in the serious bodily injury or death of a driver or passenger of another motor vehicle.

Such a reckless driving offense would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) and the court could:

- suspend the offender's driver's license for at least 30 days, beginning on the day of the conviction; and
- require the offender to complete a driving safety course before their driver's license could be reinstated.

A judge could also order an offender under this bill who had been placed on community supervision to attend and successfully complete a driving safety course. An offender under this bill could be simultaneously

prosecuted under a different law.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 955 would provide more appropriate, stricter penalties for reckless driving that resulted in serious bodily injury or death. Drivers who make the choice to drive recklessly should be held accountable for their actions.

Current statute only provides a $200 fine and a few days in jail for reckless driving, which is not sufficient to cover the loss of a loved one. Cruelty to animals is a class A misdemeanor and littering laws carry a fine of $500 while a reckless driving offense carries only a minor misdemeanor. HB 955 would send a message that Texas takes the offense of reckless driving seriously and would ensure that reckless drivers who killed or seriously injured others were punished appropriately.

Determination of criminal negligence does not cover all instances of reckless driving that result in death or serious bodily injury. One victim, Sarah Laws, was killed by a reckless driver on Interstate Highway 10, but her family could not press criminal negligence charges because the reckless driver had not scraped the car she rode in.

OPPONENTS SAY:

HB 955 would unnecessarily increase costs to taxpayers by adding jail time for reckless drivers. Criminally negligent homicide is already punishable as a state-jail felony, which state-jail felony, punishable by up to two years in jail and an optional fine of up to $10,000. This penalty alone would appropriately punish drivers who negligently caused the death of a person through reckless driving.

SUBJECT: Prohibiting employers from accessing employees' personal online accounts

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman

0 nays

WITNESSES: For — Rick Levy, AFL-CIO

Against — Cathy Dewitt, Texas Association of Businesses; John Fleming, Texas Mortgage Bankers Association; Karen Neeley, Independent Bankers Association of Texas (*Registered, but did not testify:* Kathy Barber, NFIB; Jeff Burdett, Texas Cable Association; Celeste Embrey, Texas Bankers Association)

On — Wendy Reilly, The Technology Association of America; Matt Simpson, ACLU of Texas (*Registered, but did not testify:* Geoff Wurzel, TechNet)

BACKGROUND: Labor Code, subch. B governs unlawful employment practices.

DIGEST: CSHB 318 would add a new section to Labor Code, subch. B to prohibit an employer from requiring or requesting from an employee or job applicant a user name, password, or other means for accessing a personal account, including a personal e-mail account, a social networking website account, or a profile on an electronic communication device. "Electronic communication device" would be defined as a computer, telephone, personal digital assistant, or similar device to create, transmit, and receive information. An employer who violated the bill would be committing an unlawful employment practice.

The bill would allow an employer to access an employee's account if the employer had reasonable belief that the employee had violated federal or state law or an employment policy of the employer, including policies regarding:

- use of electronic devices for work-related communications;
- storing sensitive, private consumer information or proprietary information;
- employee cooperation in a workplace investigation; or
- the safety and security of employees or customers.

The bill would not prohibit employer policies on use of employer-provided electronic communication devices or the use of personal electronic devices during work, nor would it prohibit the monitoring of employee use of employer-provided electronic communication devices or employer-provided email accounts. The employer could lawfully obtain information in the public domain about the applicant or employee.

The bill would exempt state or local law enforcement agencies, as well as financial services employers. The latter would include depository institutions, mortgage bankers and residential mortgage loan companies, registered financial advisory firms, regulated loan companies, or insurance companies and agencies. CSHB 318 also would not apply to an employee of a financial services firm, securities exchange, registered securities association, or registered clearing agency using a personal social media account or electronic communications device to conduct business.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

This bill would help safeguard employees' rights to privacy and free speech. Coercing an employee to hand over a password and user name to an online social media or email account is tantamount to eavesdropping and is an unfair exploitation of the power an employer holds over an employee. By passing this bill, the Legislature would give clear direction to employers and prevent the issue from being decided by the courts.

This bill would protect not only employees but employers. Employers who access applicants' or employees' social accounts may open themselves up to discrimination lawsuits should they discover information regarding protected status (such as sexual orientation, race, religion, disability, or political expression). Under the federal Health Insurance Portability and Accountability Act, an individual's health information is protected and confidential.

CSHB 318 is nuanced enough to allow employers a reasonable degree of latitude in complying with their other obligations while also protecting employees' rights. Employers could investigate violations of state and federal law or of workplace policies on the basis of a reasonable belief of wrongdoing. This would allow employers to consider evidence of harassment on an employee's personal account, for example, or of misleading advertisements of company goods or services sent in private by an employee in contravention of the Deceptive Trade Practices Act.

The bill would include a dispensation for the financial services industry, as those firms must comply with a different standard of communications under federal law. Employers must know whether employees have used accounts for illegal purposes in order to avoid liability under the Securities Exchange Act of 1934, the Truth in Lending Act, or other financial services-specific regulation.

CSHB 318 also would allow local and statewide law enforcement to access personal accounts of applicants or employees, an important exception that could protect public safety. Law enforcement agencies may need access to their employees' and applicants' accounts in order to determine whether they have affiliations with gangs or other groups or to discover other sensitive information. This dispensation for law enforcement agencies would enable a more thorough investigation into the character and background of potential hires and current employees. Employees who work in law enforcement offices should be held to a higher standard of scrutiny with respect to their personal conduct, as they hold positions of authority.

Employers still would have oversight over employee activity on employer-provided electronic devices and accounts, a fair exception.

OPPONENTS SAY:

This bill would hinder employers' ability to enforce workplace policies, including policies against harassment and bullying. Without active access to employees' social accounts, employers cannot monitor bad behavior. It can seriously hamper employers from preventing the leaking of trade secrets or proprietary information by employees, a key problem in industries reliant on strong protections for intellectual property, such as the technology industry. Employers could be held liable for their employees' online presence without being able to monitor or control it.

The bill's language would result in unintended consequences. Instead of

prohibiting employers from asking for a username *and* a password, the bill would prohibit employers from asking for a user name *or* a password. On some social networking websites, a user's email address serves as a user name. The bill could have the effect of preventing employers from so much as asking for an employee's personal email address, important contact information that employers could legitimately need.

The bill would fail to define what is meant by a "personal account" of an employee or what constituted a "reasonable belief" by an employer before opening an investigation into an employee's personal account. The employer could be given broad latitude to search an employee's account when conducting an investigation, instead of limiting access to only the pertinent parts of an account. This addition would undercut seriously the prohibition against employer access and fail to define clearly the circumstances in which an employer can justify an investigation. "Reasonable belief" may in fact impose a positive duty on employers to monitor their employees' activity on personal accounts.

OTHER OPPONENTS SAY:

The bill is unnecessary. Employers know better than to go on an employee's personal account and expose themselves to knowledge that would render them liable.

The courts, not the legislature, should determine the boundary of an employee's right to privacy.

The bill would include too many exceptions to the prohibition against accessing an employee's personal account. Law enforcement and financial services companies would not have to comply with the general rule against requiring or coercing an applicant or employee's user name or password, and employers still could access the employee's personal account if conducting an investigation. The exemptions for law enforcement and financial services could result in the law being unevenly applied to different types of employers.

NOTES:

The committee substitute differs from the bill as filed by adding exemptions to the prohibition against employers accessing employees' personal accounts, including:

- exemptions to the bill for state and local law enforcement agencies,
- exemptions to the bill if the employer has reasonable belief the employee has violated state or federal law or workplace policies;

- exemptions for employers in the financial services industry and for any financial services employee who used the employer-provided account or device to conduct business.

CSHB 318 has a companion bill in the Senate, SB 118 by Hinojosa, which is identical to the bill as originally filed and was referred to the Business and Commerce Committee on January 29, 2013.